

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (WORCESTER)

FILED

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Scott Stern,
Plaintiff

v.

University of Massachusetts at Amherst
Health Center,
Bernadette Melby, Director of Health
Services,
Brian Burke, Associate General Counsel
University of Massachusetts at Amherst,
Board of Trustees of the University of
Massachusetts,
Massachusetts Board of Higher Education,
Massachusetts Division of Health Care
Finance and Policy,
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

C.A. No. 4:04-cv-30176-FDS

**MOTION OF THE DEFENDANTS
MASSACHUSETTS BOARD OF HIGHER EDUCATION,
MASSACHUSETTS DIVISION OF HEALTH CARE FINANCE AND POLICY, AND
GETACHEW HABTEH-YIMER
TO DISMISS PLAINTIFF'S "CONSOLIDATED COMPLAINT OF
ALL AMENDMENTS"**

Pursuant to Rules 8(a), 8(e), and 10(b) of the Federal Rules of Civil Procedure, the defendants Massachusetts Board of Higher Education (the "Board"), the Massachusetts Division of Health Care Finance and Policy (the "Division"), and Getachew Habteh-Yimer ("Mr. Habteh-Yimer")¹ move to dismiss the plaintiff's Consolidated Complaint because it fails to contain a

¹ Mr. Habteh-Yimer is an employee of the Division. The *pro se* plaintiff Scott Stern (the "plaintiff") refers to Mr. Habteh-Yimer as "Mr. Getachew" in his "Consolidated Complaint of All Amendments" (the "Consolidated Complaint") dated November 3, 2004.

“short and plain statement” of the plaintiff’s claims against the Board, the Division, and Mr. Habtehi-Yimer.² Alternatively, the Board, the Division, and Mr. Habtehi-Yimer request the Court enter an order directing the plaintiff to file an amended Consolidated Complaint that conforms with Fed. R. Civ. P. 8(a), 8(e), and 10(b).

It is well settled that Rules 8(a), 8(e), and 10(b) of the Federal Rules of Civil Procedure govern the content of complaints filed in this Court. Rule 8(a) requires the complaint to “contain a short and plain statement . . . showing that the pleader is entitled to relief. . . .” Rule 8(e) requires “(e)ach averment of a [complaint to] be simple, concise and direct.” Lastly, Rule 10(b) requires “(a)ll averments of claim . . . be made in numbered paragraphs, the contents of each shall be limited as far as practicable to a statement of a single set of circumstances.” The Court is empowered by Fed. R. Civ. P. 41(b) to dismiss any complaint which fails to comply with these pleading rules. *Kuehl v. FDIC*, 8 F.3d 905, 908 (1st Cir. 1993).

Here, the Court should dismiss the plaintiff’s Consolidated Complaint because it fails to comply with the pleading rules in a number respects. Specifically, the Consolidated Complaint is a 41 page meandering document³ that is verbose, argumentative, and confusing. In sum, the Board, the Division, and Mr. Habtehi-Yimer cannot fairly be expected to respond to it. Accordingly, they request the Court dismiss the Consolidated Complaint, or alternatively, enter an order directing the plaintiff to file an amended Consolidated Complaint that conforms with the

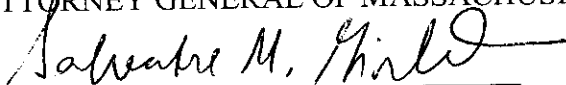
² The Board, the Division, and Mr. Habtehi-Yimer submit this Motion without waiving any other defenses that they have against the plaintiff’s Consolidated Complaint, including immunity defenses.

³ The Consolidated Complaint has unnumbered pages.

Court's pleading rules.

Respectfully submitted,

THOMAS F. REILLY,
ATTORNEY GENERAL OF MASSACHUSETTS



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Date: 11/15/04

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above
document was served upon the attorney of
record for each other party by mail (by hand)

on 11/15/04
